

THOMAS LEWIS

DECEMBER 9 (legislative day, DECEMBER 7), 1943.—Ordered to be printed

Mr. WILSON, from the Committee on Claims, submitted the following

REPORT

[To accompany H. R. 3189]

The Committee on Claims, to whom was referred the bill (H. R. 3189) for the relief of Thomas Lewis, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

The facts will be found fully set forth in House Report No. 772, Seventy-eighth Congress, first session, which is appended hereto and made a part of this report.

[H. Rept. No. 772, 78th Cong., 1st sess.]

The Committee on Claims, to whom was referred the bill (H. R. 3189) for the relief of Thomas Lewis, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

The purpose of the proposed legislation is to pay the sum of \$1,500 to Thomas Lewis, of Route 1, Martinsville, Va., in full settlement of all claims against the United States for personal injuries sustained by him on October 16, 1941, when he was struck in the right eye by a piece of rock while on a work detail as an inmate of the Federal prison camp at Mill Point, W. Va.

STATEMENT OF FACTS

It appears that on September 16, 1941, Thomas Lewis was convicted in the United States District Court for the Northern District of West Virginia on a charge of possessing and concealing untax-paid liquor and was sentenced to imprisonment for a term of 4 months. On September 19, 1941, he was committed to the Federal prison camp, at Mill Point, W. Va. On October 16, 1941, while on a work detail, he was struck in the right eye by a piece of rock. The injury caused total blindness in that eye. He was released on January 16, 1942.

The claimant is 26 years of age and resides in Virginia. Under the Virginia workmen's compensation law, an employee who loses the sight of one eye as the result of an injury sustained in the course of his employment is entitled to 55 percent of his average earnings for the period of 100 weeks (Virginia Code (1936), sec. 1887 (32)(p)). If the claimant had been privately employed at a salary between \$25 and \$30 a week, he would be entitled to receive approximately the sum of \$1,500, the amount provided for in the bill under consideration.

The Congress has from time to time passed private bills to pay compensation to prisoners for personal injuries received by them in the performance of their

assigned tasks (act of Dec. 17, 1942, Private Act No. 595, 77th Cong.; act of Nov. 2, 1941, 55 Stat. 1036; act of July 11, 1937, 50 Stat. 986; act of Mar. 7, 1936, 49 Stat. 2234.)

Therefore your committee recommends favorable consideration to the bill. Appended hereto is the report from the United States Attorney General, together with other pertinent evidence.

DEPARTMENT OF JUSTICE,
OFFICE OF THE ATTORNEY GENERAL,
Washington, D. C., July 31, 1943.

Hon. DAN R. MCGEEHEE,
*Chairman of the Committee on Claims,
House of Representatives, Washington, D. C.*

MY DEAR MR. CHAIRMAN: This is in response to your request for the views of this Department relative to a bill (H. R. 3189) for the relief of Thomas Lewis.

The bill under consideration would provide for the payment of the sum of \$1,500 to Thomas Lewis, of Martinsville, Va., as compensation for personal injuries sustained by him while an inmate of the Federal prison camp, at Mill Point, W. Va.

It appears from the files of this Department that on September 16, 1941, the claimant was convicted in the United States District Court for the Northern District of West Virginia on a charge of possessing and concealing untax-paid liquor and was sentenced to imprisonment for a term of 4 months. On September 19, 1941, he was committed to the Federal prison camp, at Mill Point, W. Va. On October 16, 1941, while on a work detail, he was struck in the right eye by a piece of rock. The injury caused total blindness in that eye. He was released on January 16, 1942.

The claimant is 26 years of age and resides in Virginia. Under the Virginia workmen's compensation law, an employee who loses the sight of one eye as the result of an injury sustained in the course of his employment is entitled to 55 percent of his average earnings for the period of 100 weeks (Virginia Code (1936), sec. 1887 (32) (p)). If the claimant had been privately employed at a salary between \$25 and \$30 a week, he would be entitled to receive approximately the sum of \$1,500, the amount provided for in the bill under consideration.

The Congress has from time to time passed private bills to pay compensation to prisoners for personal injuries received by them in the performance of their assigned tasks (act of December 17, 1942, Private Act No. 595, 77th Cong.; act of November 2, 1941, 55 Stat. 971; act of August 5, 1939, 53 Stat. 1501; act of July 19, 1937, 50 Stat. 1036; act of July 11, 1937, 50 Stat. 986; act of March 7, 1936, 49 Stat. 2234).

In the light of the foregoing circumstances, I recommend the enactment of the bill.

I have been informed by the Director of the Bureau of the Budget that there is no objection to the submission of this report.

Sincerely yours,

FRANCIS BIDDLE,
Attorney General.

STATE OF VIRGINIA,
City of Danville, to wit:

This day personally appeared before me, Lola Turner Morris, a notary public in and for the city of Danville, State of Virginia, Thomas Lewis, who first being duly sworn, deposed and stated as follows:

"My name is Thomas Lewis and I reside at Route 1, Martinsville, Va. Prior to the September 1941 term of the United States District Court for the Western District of Virginia at Danville, Va., I was residing at Bassett and was indicted for removing and concealing ardent spirits on which charge I was tried by a jury and found guilty, although at the trial I denied my guilt and still deny it but understand that the verdict of the jury settled that point. The Honorable Alfred D. Barksdale, the presiding judge, sentenced me to 4 months at Mill Point, W. Va., at which institution I was assigned the task of "napping" rock, that is to say, making small rocks out of big ones with a hammer. On the 17th day of October 1941 I was unable to work by reason of the fact that I had a kernel under my arm which was caused by vaccination for smallpox and I was relieved from duty on that day as I was unable to nap the rock. Whereupon I was assigned to light work which I could do with one hand where a group of men were assigned to level a dirt road.

"I had finished the task assigned and was coming back by the place where the crew was napping rock when a piece of rock, which I assume came from the rock that the crew was breaking, struck me in my right eye and from which I am totally blind in my right eye. There were two boys that I know that will substantiate the above facts and their names are Tanny Boyd, who lives at Radford, Va. and was in the institution at that time, and Grover Reed Keaton, who lives at Philpott, Va., and who was also a prisoner at Mill Point at the same time. Both of these men were working in the gang that was napping the rock at the time I was passing by. After I was struck I was taken from the institution to Arden, W. Va., where I was placed in the hospital and remained from Thursday until Saturday evening, at which time I was taken to Ashland, Ky. to a hospital where I remained for 58 days. "At the time I was struck by the piece of rock in question I was from 12 to 18 feet away from where the gang was napping rock. If I had been engaged in napping the rock I would, of course, have been wearing goggles but no one wore goggles at the institution unless they were actually engaged in the napping of the rock."

THOMAS LEWIS.

Subscribed and sworn to before me in my city and State aforesaid this 27th day of February 1943.

LOLA TURNER MORRIS, *Notary Public.*

My commission expires August 6, 1946.

STATE OF VIRGINIA,
City of Danville, to wit:

This day personally appeared before me, Lola Turner Morris, a notary public in and for the city and State aforesaid, Thomas Lewis, who first being duly sworn, deposed and stated as follows:

"Prior to my imprisonment I averaged approximately \$16 per week as a common laborer. Of course, it can be readily seen if I did not have my present injury I could make a great deal more."

THOMAS LEWIS.

Subscribed and sworn to before me this 24th day of May 1943.

LOLA TURNER MORRIS, *Notary Public.*

My commission expires August 6, 1946.

DEPARTMENT OF JUSTICE

BUREAU OF PRISONS

Washington

MEMORANDUM RE CLAIM FOR INJURY TO THOMAS LEWIS

The following report was made October 16, 1941, by Richard H. Balzer, junior officer, who was in charge of the work detail to which Thomas Lewis was assigned at the time of injury:

"At 3:30 p. m. this day the following inmate, Thomas Lewis, 886, was injured by a sprawl of rock in right eye while knapping rock. This man had protective goggles issued to him and had strict orders to wear them at all times while on knapping assignment. At the time of the injury I found said goggles around his neck and when questioned by me as to how it happened he replied that his goggles had steamed up from perspiration and that he was cleaning them when a sprawl of rock coming from the direction of other knappers hit his eye."

Report on Administration Form No. 19, required in such cases, was dated October 20, 1941, and the following excerpts are taken therefrom:

Name: Lewis, Thomas. Register No. 886.

Date received at institution: September 9, 1941.

Time and place of injury: October 16, 1941, 3:30 p. m.

Department: Knapping detail.

Witnesses to injury:

Keaton, No. 887, Federal Prison Camp, Mill Point, W. Va.

Meador, No. 693, Federal Prison Camp, Mill Point, W. Va.

Nature and severity of injury: Traumatic injury to iris and cornea, right eye.

Attending physician: Horace L. Goodman, Ronceverte, W. Va.

Started losing time:

October 16, 1941.

October 18, 1941, transferred to Federal Correctional Institution, Ashland, Ky., for treatment.

What employee was doing: Knapping rock on new road construction.

Injured's report of accident: "The injured made the following statement to me: 'I had just taken them goggles off when that piece of rock hit me in the eye.' When I asked him why he had taken them off, he replied: 'They were steamed up and I wanted to wipe them off.'"

Recommendation for prevention: Issue wire-screen goggles.

Signed by Richard H. Balzer, junior officer.

(Notation on this report made by S. J. O., safety engineer, reads as follows: "Wire-screen goggles not suitable for rock knapping.")

Physical examination made November 18, 1941 by Kenneth J. Hamrick, chief medical officer of the camp, reads as follows: "Traumatic injury to right-eye iris. Medical history and clinical symptoms and signs: Struck in right eye by small piece of rock while at work on the road. Iris punctured—right eye."

Transfer was recommended by the chief medical officer, and inmate was transferred to Federal Correctional Institution, Ashland, Ky., on October 18, 1941, for treatment.

It is a definite procedure on all road-construction projects to instruct inmates to wear goggles when knapping rock or doing other work which might cause injury to the eyes. Goggles of course are not comfortable when an inmate is doing hard work which causes body heat and consequent steaming of lenses. It is difficult to compel the inmates to wear the goggles at all times, as it is impractical for an officer to keep after inmates for that purpose continuously, especially when he has a number of inmates in his crew.

A copy of an affidavit made by Lewis indicates that the accident happened on October 17, 1941. The date of the accident, however, was October 16, 1941. Lewis also states that because of the result of a vaccination he was relieved from duty of knapping rock. It will be noted that he entered the institution on September 19, 1941, and therefore was vaccinated about that time. It is inconceivable that the results of the vaccination would have anything to do with his work assignment on October 16, 1941. Lewis also states that after he was injured he was taken from the institution to Arden, W. Va., where he was placed in a hospital and remained until he was taken to the Ashland institution for treatment 3 days later. He was actually taken to the contract hospital at Ronceverte, W. Va. Lewis also states that if he had been engaged in knapping rock he would have been wearing goggles but no one wore goggles unless they were actually engaged in the knapping of the rock. His statement quoted at the time of injury indicates that he had just taken the goggles off because they were steamed up and he wanted to wipe them off.

The discrepancies in the statement of Lewis with the records made at the institution at the time of injury do not seem to be material. The fact remains that he sustained the injury to his eye which apparently was not due to gross negligence because he had to remove his goggles to wipe off the steam.